

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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IN RE: Brian C Gardner Ashley M Gardner aka Ashley Simpson <u>Debtor(s)</u>	CHAPTER 13
Credito Real USA Finance <u>Movant</u> vs. Brian C Gardner Ashley M Gardner aka Ashley Simpson <u>Debtor(s)</u>	NO. 23-10462 PMM 11 U.S.C. Section 362
Kenneth E. West <u>Trustee</u>	

**MOTION TO OBTAIN RELIEF FROM THE AUTOMATIC STAY**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Credito Real USA Finance ("Movant"), its successors and/or assigns, files this Motion for Relief from the Automatic Stay ("Motion"), and in support thereof, would respectfully show:

1. On February 16, 2023 ("Petition Date"), Brian C. Gardner and Ashley M. Gardner ("Debtors") filed a voluntary petition under Chapter 13 of the Bankruptcy Code.
2. This Court has jurisdiction of the Motion by virtue of 11 U.S.C. §§105, 361 and 362 and 28 U.S.C. §§157 and 1334.
3. Movant is the owner and holder of a Retail Installment Sale Contract ("Agreement") pursuant to which Movant financed for Debtors the purchase of a 2014 Ford Escape - VIN: 1FMCU0F77EUB88542 ("Collateral"). True and correct copies of the Agreement and the Certificate of Title, indicating proper perfection of Movant's security interest in the Collateral, are attached hereto as Exhibits "A" and "B", respectively.
4. By virtue of the above, Movant is the holder of a secured claim against Debtors in the amount of \$6,058.97 as of the Petition Date.
5. Debtors' Chapter 13 Plan of Reorganization ("Plan") provides for post-petition payments to be made directly to Movant. Debtors are in default under the terms of the Agreement by failing to make the March 21, 2023, payment of \$348.55 and all subsequent payments when due and owing. The amount of default owed by Debtors totals \$5,228.25.

6. Movant alleges that the automatic stay should be lifted for cause pursuant to 11 U.S.C. §362(d)(1) in that Movant lacks adequate protection of its interest in the Collateral as evidenced by:

- (a) Debtors' default under the terms of the Agreement by failing to make installment payments when due and owing thereunder;
- (b) The Collateral, and the value of the Collateral, are in a state of decline and continues to decline; and
- (c) Debtors' failure to show that the Collateral is properly insured.

7. According to the J.D Power issue of the NADA Official Used Car Guide, the trade-in value of the Collateral as of the Petition Date was approximately \$7,675.00

8. Movant has had to retain counsel to represent it before this Court and is incurring attorneys' fees and court costs for which it is entitled to reimbursement under the terms of the Agreement.

WHEREFORE, PREMISES CONSIDERED, Movant respectfully prays that, upon final hearing of this Motion, (1) the automatic stay will be terminated to permit Movant to seek its statutory and other available remedies; (2) Movant be permitted to obtain possession of the Collateral to the exclusion of Debtors; (3) Movant be granted its attorneys' fees and costs; and (4) Movant be granted such other and further relief, at law or in equity, as is just.

Respectfully submitted,

/s/ Michael P. Farrington, Esquire

Michael P. Farrington, Esquire  
KML Law Group, P.C.  
701 Market Street, Suite 5000  
Philadelphia, PA 19106-1532  
Phone: (215) 627-1322 Fax: (215) 627-7734